U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12009056

Date: MAY 26, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a dental surgeon, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

[1] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree.[3] Therefore, we need not consider the alternative claim of exceptional ability. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner worked at various dental clinics in [redacted] from 1991 until he entered the United States in 2018 as an F-2 nonimmigrant spouse of an F-1 nonimmigrant student. After he filed the petition, the Petitioner began working as "an Orthodontic Assistant and Personal Floater Manager at [redacted] in [redacted] Florida. The Petitioner does not claim to be licensed to practice dentistry in the United States, but he states that he is pursuing licensure. On appeal, the Petitioner repeats and elaborates on prior claims and asserts that the Director did not give sufficient weight and consideration to the evidence. As outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.[4]

On Part 6 of the petition form, the Petitioner identified his occupation as "dental researcher," but provided the job description and SOC Code corresponding to oral surgeons. In response to a request for evidence (RFE), the Petitioner calls himself "a Dental Surgeon, exclusively dealing in orthodontics."

In his "Professional Plan & Statement," the Petitioner calls himself "a Dental Surgeon and Dental Researcher," but the plan includes no other mention of research. The Petitioner states that his "career plan in the United States is to work with a health care facility to provide expert advice and treatment to patients." The remainder of the statement consists primarily of general descriptions of the duties of a dental surgeon. A separate statement discusses the duties of a dental surgeon and describes some tools and techniques of the profession. Advertisements for the Petitioner's dental clinic discuss some of these techniques, but there is no indication that the Petitioner developed or significantly improved these techniques.

The owner of [redacted] in [redacted] Florida, states that, during a week-long visit to the clinic, the Petitioner "demonstrated new dental techniques and improved our business operation system." The owner states: "I would like [the Petitioner] to impart his great knowledge in dentistry in general and business administration," but she does not specifically state that the Petitioner would practice dentistry there. A separate job offer letter from the same clinic states that the clinic desires "to hire the [Petitioner] as an Office Manager," which is an administrative position that does

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[3] The Petitioner holds a degree in dental surgery from the [redacted]
[4] While we may not discuss every document submitted, we have reviewed and considered each one.

not involve performing dental or surgical procedures. Subsequent submissions do not show that this job offer (repeatedly marked "Tentative") came to fruition after the Petitioner obtained employment authorization.

Responding to the RFE, the Petitioner states: "my overall proposed endeavor in the United States is to offer my expertise to help in the treatment and care of patients, while also teaching others in my field, and helping with the administrative tasks of operating a dental clinic and practice." He also states: "my work in the U.S. will involve conducting research in the dental field, which is related to determining the best type of treatment, and techniques to use for my clients, especially when I am faced with complex cases." Determining the best course of treatment for individual patients is not research that would have any impact outside of the Petitioner's own dental practice or add to the general body of knowledge in the field.

The Petitioner asserts: "My work in the United States is nationally important, as dental health is extremely important to the health and well-being of the population." The Petitioner does not, however, establish that the work of one dentist or dental surgeon has a nationally significant impact. The Petitioner claims: "my technical expertise in the dental field has brought numerous advantages to my served patients, and to the overall population of [redacted]" The Petitioner provides information about the clinics where he has worked and the services he performed there, but does not explain how his work has benefited "the overall population of [redacted]

The Petitioner cites statistics intended to show that there is a shortage of dentists in the United States. A shortage of dentists in the United States is not sufficient to demonstrate the national importance of the work proposed by the Petitioner. A shortage of qualified professionals alone does not render the work of an individual dentist nationally important under the *Dhanasar* precedent decision. In addition, although the Petitioner asserts that he intends to open several clinics, which "can have substantial economic effects in the U.S., as dentists need a very complete staff . . . as well as contracted help" and this employment "will affect . . . the local and national economy," the Petitioner does not show that his clinics will employ enough people to have a national economic impact. Many of the Petitioner's arguments apply to every dental practice, but Congress did not exempt dentists wholesale from the job offer/labor certification requirement.[5] Because foreign dentists are typically subject to that requirement, the intrinsic benefits of operating a dental clinic are not presumptive grounds for waiving that requirement.

The Petitioner states: "I intend to hold courses and serve as an instructor in the field. I already have several offers, which I have included throughout this response." Letters from dentists at various locations in the United States indicate that the Petitioner has given presentations at individual clinics. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. The same reasoning applies here. The Petitioner has not shown that his teaching activities, which so far amount to occasional visits to other clinics, have had or will have a significant national impact on the practice of dentistry in the United States.

[5] The U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. A determination as to whether the benefits inherent in the labor certification process are outweighed by other factors favorable to the Petitioner relates to the balancing analysis set forth under the third prong of the *Dhanasar* framework.

Some aspects of the Petitioner's proposed endeavor, for example research, lack crucial details. Where the Petitioner has provided specific information about his proposed endeavor, he has not significantly distinguished himself from other dentists and dental surgeons in his specialty.

For these reasons, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework. Because this issue is dispositive of the Petitioner's appeal, we decline to reach, and hereby reserve, the appellate arguments regarding the remaining issues.[6]

III. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[6] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).